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EXAMINER

WILSON, GREGORY A

ART UNIT	PAPER NUMBER
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3749

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/818,383

Applicant(s)

KREICHAUF, RUTH D.

Examiner

Gregory A. Wilson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 26-39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended claim 26 to now recite a kit to provide a breathable room atmosphere to an existing room in a building and to provide the breathable room during an event, this is language not previously recited and constitutes new matter since it appears to alter the scope of the invention as originally filed. In addition, claim 26 also includes language "wherein the portable sealing device, portable carbon dioxide scrubber, and portable gaseous oxygen source **are configured to be removed after said event** for continued normal use of said room.", which is now a newly recited limitation not previously supported nor claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 28, 32-36, and 39 are rejected under 35 USC 103(a) as being obvious over Daroga, et al. (U.S. patent No. 4,631,872) in view of Trice (U.S. patent No. 3,251,159).

Daroga, et al. disclose a nuclear blast and fall out shelter, which can be made of different types of materials and in different shapes and sizes. See column 3, lines 9-13.

The shelter includes oxygen cylinders 24, carbon dioxide absorbers 44, and sealing devices (valve 52 for sealing ventilation duct 51, air-tight door 16 and escape hatch 62).

With respect to claim 28, Daroga, et al. also recognize that other types of oxygen generators could be employed such as those produced by electrolysis of water (see column 3, lines 1-8).

Although the Daroga, et al. shelter is an arrangement of interrelated parts attached together (see column 1, lines 65-68), it cannot be certain from the teachings of Daroga, et al. that such could broadly be considered a "kit" or group of interrelated parts as addressed in *In re Venezia*, 189 USPQ 149 (CCPA 1976). However, Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble" (see column 1, lines 35-40).

Therefore, to manufacture the fall-out shelter of Daroga, et al. as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice

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for the same advantages. In so doing, the Daroga, et al. shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation and hence also inherently anticipate the applicants newly recited limitation of claim 39 since it is capable of being transported by a human.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claim 27 and 35 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. and Trice for reasons stated in the rejection of claim 26 above, and further in view of Connor (U.S. patent No. 2,982,511).

Claim 27 calls for the sealing device to be an "inflatable gas bladder". Although the Daroga, et al. reference does not provide an explicit description of in-line valve 52, attention is directed to the Connor reference which discloses an inflatable in-line valve designed to be simple in construction and easy to install. See column 1, lines 20-25. To

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substitute an inflatable valve such as taught by Connor for valve 52 on Daroga, et al. would have been obvious in order to simplify the assembly of the overall "kit".

Claim 29 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Mayland, et al. (U.S. patent No. 3,485,743). The Mayland, et al. reference teaches an electrolytic oxygen generating/carbon dioxide absorbing system for use in a fallout shelter. See column 2, line 14. The unwanted hydrogen gas is vented away from the fallout shelter. See column 3, lines 4-6 and column 5, lines 55-59. As illustrated by Mayland, et al. in figure 2, the hydrogen gas is vented from compartment 10 via tubing, which is capable of being connected to any desired location such as an existing plumbing water trap of sink 65 or toilet 64.

To employ the system of Mayland, et al. as part of the "kit" of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating/carbon dioxide absorbing system used in fall-out shelters for another, especially since Daroga, et al. recognizes that other systems could be selected.

Claim 30 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Hoshiko (U.S. patent No. 4,508,700). The Hoshiko reference discloses a conventional

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oxygen generator that includes a solid material that generates gaseous oxygen when contacted with water. See column 1, lines 27-30.

To employ the system of Hoshiko as part of the kit of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating system for another, especially since Daroga, et al. recognizes that other systems could be selected.

Claim 31 is rejected under 35 USC 103(a) as being obvious over Daroga, et al. in view of Trice for reasons stated in the rejection of claim 26 above, and further in view of Staub, Jr. et al. (U.S. Patent No. 3,593,711). The Staub, et al. reference discloses a conventional oxygen generating/carbon dioxide absorbing system wherein a chemical revitalizing compound serves as both an oxygen source and a carbon dioxide scrubber for uses in sealed chambers or rooms (see abstract).

To employ the system of Staub, et al. as part of the "kit" of Daroga, et al. would have been obvious and would amount to mere selection of one well known oxygen generating/carbon dioxide absorbing system for another, especially since Daroga et al. recognizes that other systems could be selected.

Claims 26, 28-31, 34 and 36 are rejected under 35 USC 103(a) as being obvious over Rudinger (U.S. patent No. 2,977,723) in view of Trice and further in view of Daroga, et al., Mayland, et al., Hoshiko or Staub, et al.

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Although the Rudinger bombshelter is made of poured concrete (see column 2, lines 3-6), Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble." See column 1, lines 35-40.

Therefore, to manufacture the fall-out shelter of Rudinger as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Rudinger shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation.

The Rudinger reference discloses a bombshelter having ventilation duct 32 "which may be cut out of operation by being closed by a steel door (not shown)". See column 3, lines 9 and 10. Such steel door meets the claim limitation of "at least one sealing device for sealing said room from any coupled ventilation duct".

Although no equipment is shown within the bombshelter, the Rudinger reference does recognize that internal equipment must be provided such as an oxygen generator and a carbon dioxide filter. See column 2 and 3, the bridging paragraph.

To provide oxygen generating systems and carbon dioxide systems such as those disclosed by Daroga, et al., Mayland, et al., Hoshiko, or Staub, et al. together with the bombshelter of the Rudinger modified in view of the teachings of Trice as a "kit" would

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have been obvious in order to maintain the interior atmosphere at a safe level, especially since Rudinger already recognizes the necessity for such systems.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claims 27 and 35 are rejected under 35 U.S.C. 103(a) as being obvious over Rudinger, Trice, Daroga, et al., Mayland, et al., Hoshiko and Staub, et al. for reasons stated in the rejection of claim 26 above, and further in view of Pearman, et al. (U.S. patent No. 6,217,441).

The Rudinger bombshelter includes a steel door (not shown) to cut out operation of the ventilation duct 32. The Pearman, et al. reference discloses a sealing device in the form of an inflatable bladder for sealing off ventilation ducts in the event of a chemical or biological attack. To provide an inflatable sealing device as, for example, taught by Pearman, et al. with the Rudinger bombshelter in "kit" form would have been an obvious substitution of one well known sealing device for another within the bombshelter arts that would work equally well as the steel door.

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The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Claims 27 and 35 are rejected under 35 USC 103(a) as being obvious over Rudinger, Trice, Daroga, et al., Mayland, et al., Hoshiko and Staub, et al. for reasons stated in the rejection of claim 26 above, and further in view of Long et al. (BIOTERRORISM SECRETS FOR SURVIVAL, Chapter 5, 1998). On page 48 of chapter 5, Long et al. teaches how to create a "sealed Room" or "Safe Room" in case of a terrorist biological

attack. Long, et al. suggest using plastic sheets and duct tape to cover and seal any air leaks such as doors and windows. Although Rudinger already suggests closing off all ventilation openings, to employ plastic and duct tape to seal off any ventilation ducts such as filter 32 and doors 28 and 48 on the Rudinger bombshelter would have been obvious in view of the teachings of Long et al. in order to completely seal the interior chamber from any infiltration of biological agents.

Claims 26, 27 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Michielson (U.S. patent No. 3,575,167). In chapter 5 of the Long, et al., BIOTERRORISM SECRETS FOR SURVIVAL, Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long, et al. suggests different ways to seal off a room in your home, one being to use “kits” of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn't further address how the interior atmosphere should be replenished, attention is directed to the Michielsen reference which discloses a breathing system for generating oxygen and absorbing carbon dioxide (see column 4, line 2 through column 5, line 20) to be stored in a home (see column 2, lines 7-10) and used for many diverse purposes (see column 2, lines 55-59) such as in toxic or radioactive contaminated atmosphere (see column 1,

lines 72-74). To include this type of rebreathing apparatus with the "kit" of Long, et al. would have been obvious in order to breath inside the safe room should the oxygen supply diminish as well as to breath safely when the time comes to leave the shelter as recognized on page 53 of the Long, et al. reference. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961).

Claims 26, 31 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Staub, et al. In chapter 5 of the Long et al., BIOTERRORISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long et al. suggests different ways to seal off a room in your home, one being to use "kits" of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn't further address how the interior atmosphere should be replenished, attention is directed to the Staub, et al. reference which discloses a carbon dioxide/oxygen generating system for use in a sealed chamber or room (see abstract). To include this type of system with the "kit" of Long, et al. would have been obvious in order to maintain the breathable atmosphere.

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within the sealed room. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

Claims 37 and 38 are rejected under 35 USC 103(a) as being obvious over Daroga, et al. (U.S. patent No. 4,631,872) in view of Trice (U.S. patent No. 3,251,159) and Holmes (U.S. patent No. 4,320,756).

Daroga, et al. disclose a nuclear blast and fall out shelter, which can be made of different types of materials and in different shapes and sizes. See column 3, lines 9-13. The shelter includes oxygen cylinders 24, carbon dioxide absorbers 44, and sealing devices (valve 52 for sealing ventilation duct 51, air-tight door 16 and escape hatch 62). With respect to claim 28, Daroga, et al. also recognize that other types of oxygen generators could be employed such as those produced by electrolysis of water (see column 3, lines 1-8).

Although the Daroga, et al. shelter is an arrangement of interrelated parts attached together (see column 1, lines 65-68), it cannot be certain from the teachings of Daroga, et al. that such could broadly be considered a "kit" or group of interrelated parts as addressed in *In re Venezia*, 189 USPQ 149 (CCPA 1976). However, Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to

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construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble" (see column 1, lines 35-40).

Therefore, to manufacture the fall-out shelter of Daroga, et al. as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Daroga, et al. shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

As to the use of plumbing water traps, Holmes shows a breathing device 19 for communicating fresh air from air vent 15 to the respiratory intake of the user. The device has charcoal filtering means 23 (see column 2, lines 49-53, column 2, line 63 to column 4, line 23). Thus, for the generator to include a tube for insertion through an existing plumbing water trap would be obvious in view of the above teaching in Holmes, in order to provide fresh air.

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Claims 26, 28-31, 34 and 36 are rejected under 35 USC 103(a) as being obvious over Rudinger (U.S. patent No. 2,977,723) in view of Trice and further in view of Daroga, et al., Mayland, et al., Hoshiko or Staub, et al. and Holmes.

Although the Rudinger bombshelter is made of poured concrete (see column 2, lines 3-6), Applicant's attention is directed to the Trice reference (U.S. patent No. 3,251,159) which clearly teaches a need to manufacture a fall-out and bomb shelter "which is inexpensive to construct, which is precast and therefore eliminates the need for expensive casting operations on the spot and is made in segments which are simple to handle and assemble." See column 1, lines 35-40.

Therefore, to manufacture the fall-out shelter of Rudinger as a group of interrelated parts to be assembled on site would have been obvious in view of the teachings of Trice for the same advantages. In so doing, the Rudinger shelter would be considered a "kit" and all of the parts would be "portable" to the site of installation.

The Rudinger reference discloses a bombshelter having ventilation duct 32 "which may be cut out of operation by being closed by a steel door (not shown)". See column 3, lines 9 and 10. Such steel door meets the claim limitation of "at least one sealing device for sealing said room from any coupled ventilation duct".

Although no equipment is shown within the bombshelter, the Rudinger reference does recognize that internal equipment must be provided such as an oxygen generator and a carbon dioxide filter. See column 2 and 3, the bridging paragraph.

To provide oxygen generating systems and carbon dioxide systems such as those disclosed by Daroga, et al., Mayland, et al., Hoshiko, or Staub, et al. together with the bombshelter of the Rudinger modified in view of the teachings of Trice as a "kit" would have been obvious in order to maintain the interior atmosphere at a safe level, especially since Rudinger already recognizes the necessity for such systems.

As to the inclusion of "portable" in the claim language of claim 34, this in and of itself would not render the claim patentable since it is not regarded as inventive to merely make an old device portable or movable without producing any new and unexpected result. See *Ranco, Inc. v. Gwynn et al.*, 128 F.2d 437 [54 USPQ 3]. Likewise, as "removable" in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

As to the use of plumbing water traps, Holmes shows a breathing device 19 for communicating fresh air from air vent 15 to the respiratory intake of the user. The device has charcoal filtering means 23 (see column 2, lines 49-53, column 2, line 63 to column 4, line 23). Thus, for the generator to include a tube for insertion through an existing plumbing water trap would be obvious in view of the above teaching in Holmes, in order to provide fresh air.

Claims 26, 27 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Michielson (U.S. patent No. 3,575,167) and Holmes. In chapter 5

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of the Long, et al., BIOTERRORISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long, et al. suggests different ways to seal off a room in your home, one being to use “kits” of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn't further address how the interior atmosphere should be replenished, attention is directed to the Michielsen reference which discloses a breathing system for generating oxygen and absorbing carbon dioxide (see column 4, line 2 through column 5, line 20) to be stored in a home (see column 2, lines 7-10) and used for many diverse purposes (see column 2, lines 55-59) such as in toxic or radioactive contaminated atmosphere (see column 1, lines 72-74). To include this type of rebreathing apparatus with the “kit” of Long, et al. would have been obvious in order to breath inside the safe room should the oxygen supply diminish as well as to breath safely when the time comes to leave the shelter as recognized on page 53 of the Long, et al. reference. Likewise, as “removable” in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

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device has charcoal filtering means 23 (see column 2, lines 49-53, column 2, line 63 to column 4, line 23). Thus, for the generator to include a tube for insertion through an existing plumbing water trap would be obvious in view of the above teaching in Holmes, in order to provide fresh air.

Claims 26, 31 and 32-36 are rejected under 35 USC 103(a) as being obvious over Long, et al. in view of Staub, et al. and Holmes. In chapter 5 of the Long et al., BIOTERRORISM SECRETS FOR SURVIVAL), Long, et al. disclose a technique for contamination-proofing your home in case of a terrorist attack with biological weapons. On pages 43 and 53, Long, et al. suggests keeping a protective suit and mask on hand. On pages 46 – 48, Long et al. suggests different ways to seal off a room in your home, one being to use “kits” of clear plastic with double-back tape (page 48, first paragraph) or plastic sheeting and duct tape (page 48, second paragraph). On page 49, Long, et al. recognizes that with a room completely sealed off, the amount of oxygen and carbon monoxide build-up would be a concern. Although Long, et al. doesn’t further address how the interior atmosphere should be replenished, attention is directed to the Staub, et al. reference which discloses a carbon dioxide/oxygen generating system for use in a sealed chamber or room (see abstract). To include this type of system with the “kit” of Long, et al. would have been obvious in order to maintain the breathable atmosphere within the sealed room. Likewise, as “removable” in the claim language of 36, it is an obvious matter of design choice to make anything removable, including the sealing

device, if the same is desired. See *In re Dulberg*, 289 F.2d 522,523, 129 USPQ 348, 349 (CCPA 1961).

As to the use of plumbing water traps, Holmes shows a breathing device 19 for communicating fresh air from air vent 15 to the respiratory intake of the user. The device has charcoal filtering means 23 (see column 2, lines 49-53, column 2, line 63 to column 4, line 23). Thus, for the generator to include a tube for insertion through an existing plumbing water trap would be obvious in view of the above teaching in Holmes, in order to provide fresh air.

Response to Arguments

Applicant's arguments filed 12/15/06 have been fully considered but they are not persuasive. Applicant has amended claim 26 to include the limitation "...wherein the portable sealing device, portable carbon dioxide scrubber, and portable gaseous oxygen source are configured to be removed after said event for continued normal use of said room." This is regarded as new matter since the applicant had not previously required these elements to be used in this way, additionally, as previously stated, it is not considered a patentable limitation to make a known article/device "portable" since by making it portable, does not produce a new or unobvious result. The Examiner furthermore maintains that anything that can be assembled, is inherently capable of being disassembled and hence removable. Is is also considered new matter because

applicant has changed the scope of the invention, as now the kit is no longer creating a breathable room, but is altering a previously build room to be accommodated in a different way. In response to applicants argument as it pertains to the term "kit" and that the examiner has not provided any teachings or suggestions in the prior art of a packaged set of objects, the Examiner respectfully disagrees. As previously stated, Daroga, et al is a shelter made up of a group of interrelated parts which include sheet walls (10, 11); I-beams (12), oxygen cylinders (24), etc. that are to be assembled, the fact that these parts must be moved to the location for assembly, given its broadest reasonable interpretation, would read on the applicants limitation of portability. Trice was introduced to teach that the shelter construction can be viewed as a kit. The term "package" which is described as a wrapped or boxed group of items, but also as described as a number of items offered as a unit (Webster's New World Dictionary) is a limitation met by both Daroga, et al and Trice.

The applicant argues that the Examiners' definition of "portable" would appear to include a high-rise office building because the steel dirders used to build the structure are transported to the site and assembled to create the building and additionally that this interpretation is contrary to the definition known by one of ordinary skill in the art. While the Examiner agrees with the applicants assessment of "portability" the Examiner maintains that the applicant has disclosed similar structure which is likewise intended to be taken to a site and constructed, but disassembled and potentially relocated. The prior art functions in the same manner as that supported by the applicants specification

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and the newly recited limitations added to claim 26 are regarded as new matter as stated above.

With regard to applicants argument with regard to make "air intake valve" of Daroga et al portable, that one of skill in the art would not consider the valve (52) or anti-blast valve (52A) as being portable, the Examiner respectfully disagrees. The examiner contends that the teaching of Daroga in view of Trice are capable of being modified to achieve the claimed structure and in this case the valve (52), while in its assembled state would appear to be installed in the underground, one of ordinary skill in the art would recognize that the valve is capable of being removed and taken to a remote location and hence is portable, but would also recognize that it may not be convenient to do so, but the convenience of removing an element is not what is being argued. Additionally as previously argued, it is not regarded as inventive to merely make an old device (ie: valve) portable or movable without producing any new and unexpected results. So in response to the applicants argument that Daroga et al and/or Trice provide no suggestion of the desirability to be moved from one location to another, the applicant has not established any unobvious benefit to making the valve portable.

With regard to applicants reply of not understanding the Examiner's previous argument that the applicant has claimed a room in combination with the kit and that the room is tied to the invention in the same way as the shelter is related to Daroga in view of Trice, the Examiner directs applicants attention to claim 26 where a breathable room is provided in the preamble and furthermore recited in the body of the claim (which gives relevance to the requirement of having a room and not just a kit with a list of

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components, the room is now a relative component of the applicants invention) which has now been amended to suggest that the objects provide a breathable atmosphere to an already existing room which didn't have a breathable atmosphere prior to the installation of the kit. This is considered new matter and would require a new consideration.

With regard to applicants argument that the Examiner has not provided any reasoning as to why one of ordinary skill in the art would have been motivated to modify the teachings of Daroga et al and/or Trice to achieve the claimed kit, the Examiner respectfully disagrees. As previously stated, it could not be certain that Daroga, et al could broadly be considered a "kit" or group of interrelated parts, but teaches a shelter with the same objective and advantages of Trice. Trice teaches an additional advantage of being able to be created [the shelter] in an inexpensive way which is pre-cast and made of segments which are simple to handle and assemble, constituting a kit. It was therefore considered obvious to modify Daroga, et al in view of Trice for this purpose.

In response to applicants argument that the air-tight door and escape hatch of Daroga et al do not appear to seal the room from a ventilation duct, column 2 describes the teaching of an air-tight door (16) and an air-tight escape hatch (62). Daroga et al furthermore teaches that the construction of the capsule can be welded, riveted, cast, or jointed in an approved manner so as to render the capsule gas, air, and water-tight in all respects; this is considered to embody a ventilation duct as well, providing there is a ventilation duct, however a specific ventilation duct has not been claimed so as per the

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applicants invention, if it were desired to have a duct attached to the room, the teaching of gas, air, and water-tightness (ie: sealing) is in place to perform the function of the applicants claimed sealing.

With regard to applicants argument as it pertains to claim 35, that the Examiner has provided no motivation, suggestion, or reasoning as to why one of ordinary skill in the art would have been motivated to modify Daroga et al/Trice in view of Connor, the Examiner respectfully disagrees and directs applicants attention to the previous rejection where the motivation was established to be for the purpose of simplifying the assembly of the overall "kit". With regard to claim 29, the applicant has argued that the Examiner's reliance on the level of ordinary skill in the art is clearly improper basis for obviousness, but has missed the reasoning that Mayland et al teaches an electrolytic oxygen generating/carbon dioxide absorbing system for use in a fallout shelter and that Daroga recognizes that a system as described by Mayland et al could be used in combination with it to perform the same function as the system in place in Daroga.

With regard to applicants response as it pertains to Pearman, applicant argues that one of ordinary skill in the art would have no motive to substitute the inflatable bladder of Pearman for the steel door of Rudinger because doing so would appear to destroy the usefulness of the Rudinger structure, the Examiner respectfully disagrees. The steel door is simply a barrier separating the interior room space from an outer space and the inflatable bladder of Pearman would work very well as part of a kit as opposed to the door of Rudinger, in addition, the inflatable bladder would most certainly offer "some protection against the radioactivity and intense heat attendant the explosion

of an atom bomb or a hydrogen bomb.” The Examiner maintains the rejection and sites the added benefit that not only would the inflatable bladder offer a better sealed environment, but would also be easier to package in a “kit”.

With regard to applicants argument as they pertain to the Examiner’s motivation to combine the teachings of Long et al in view of Michielson and Staub et al, the Examiner submits that the fact that they are related arts is not the sole motivation for combining, but as previously submitted, Long et al suggests ways to seal off a room in your home by using kits of clear plastic with double-back tape or plastic sheeting and duct tape, but doing so would increase the concern of oxygen and carbon monoxide build up. The incorporation of Michielsen’s breathing system would satisfy this concern as well as the carbon dioxide/oxygen generating system of Staub et al which would replenish the interior atmosphere. These are regarded as key motivation that one of ordinary skill in the art would find obvious for purposes of combining the references.

With regard to applicants arguments as they pertain to claim 38 and in particular the rejection of Daroga, et al in view of Trice and Holmes, the applicants states that the combination of references do not show a teaching of a portable carbon dioxide scrubber sized to remove carbon dioxide directly from the room now a portable gaseous oxygen generator sized and configured to provide sufficient amounts of oxygen to a room to meet the needs of the occupants. The applicant argues that none of the references teach or suggest such a kit and additionally argues that Holmes does not appear to be configured and sized to provide oxygen directly to the room to meet the oxygen needs as specified. The applicants argument is very vague and offers no explanation of his

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position other than stating that the combined references don't teach the designated kit. It was previously provided by the examiner that Daroga, et al in view of Trice established a teaching of oxygen cylinders and carbon dioxide absorbers which provides for a breathable environment within a sealed room, the addition of Holmes shows a breathing device (19) for a person to obtain fresh air, but contrary to the applicants suggestion that it is not suited for multiple persons, Holmes fails to provide a teaching that this breathing device can "only" be used by a single person. Additionally there is nothing preventing multiple users from making use of the tube as taught by Holmes.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

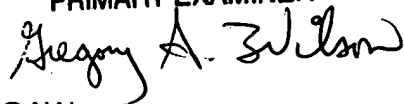
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (571)272-4882. The examiner can normally be reached on 7 am - 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on (571) 272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GREGORY WILSON
PRIMARY EXAMINER



GAW

April 12, 2007